

National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: September 14, 1998

TO: James J. McDermott, Regional Director, Region 31

FROM: Barry J. Kearney, Associate General Counsel, Division of Advice

SUBJECT: Hartwick and Hand, Case 31-CA-23384

This case was submitted for advice on whether it presented an appropriate vehicle for arguing to the Board that it should abandon its restrictive interpretation of concerted activity under Meyers Industries ⁽¹⁾ and return to the theory of implied concert under Alleluia Cushion Co.. ⁽²⁾

In Myth, Inc. d/b/a/ Pikes Peak Pain Program, 326 NLRB No. 28 (1998), the Board rejected the above argument that it should overturn Meyers Industries and return to Alleluia Cushion. Since the alleged discriminatee in the instant case acted alone and not in actual concert with any other employee, the Region should dismiss the instant charge, absent withdrawal. ⁽³⁾

B.J.K.

¹ Meyers Industries (Meyers I), 268 NLRB 493 (1984), and Meyers II, 281 NLRB 882 (1986).

² 221 NLRB 999 (1975).

³ See also Memorandum OM 98-72, "The Board's Rejection of the Alleluia Cushion Argument", dated September 3, 1998.